

# **Title 16: COURT PROCEDURE -- EVIDENCE**

## **Chapter 1: WITNESSES**

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**Maine Revised Statutes**  
**Title 16: COURT PROCEDURE -- EVIDENCE**  
**Chapter 1: WITNESSES**

**Subchapter 1: GENERAL PROVISIONS**

**§1. APPLICABILITY OF PROVISIONS TO EXECUTORS, ADMINISTRATORS OR HEIRS**

*(REPEALED)*

SECTION HISTORY

1977, c. 564, §75 (RP).

**Subchapter 2: QUALIFICATIONS, PRIVILEGES AND CREDIBILITY**

**§51. SHOWING OF INTEREST OR BIAS**

If in the trial of a civil case there is a conflict of oral testimony or the contents of a written statement are denied or controverted by the person involved therein, it is competent to show in testimony the interest or bias of the person testifying orally or the person preparing the written statement.

**§52. MENTALLY ILL PARTY**

The rules of evidence which apply to actions by or against executors or administrators apply in actions where a person shown to the court to be mentally ill is solely interested as a party.

**§53. PARTIES, HUSBANDS, WIVES AND OTHERS AS INTERESTED WITNESSES**

No person is excused or excluded from testifying in any civil action by reason of his interest in the event thereof as party or otherwise, except as otherwise provided, but such interest may be shown to affect his credibility, and the husband or wife of either party may be a witness.

**§53-A. PRIVILEGED COMMUNICATIONS TO SEXUAL ASSAULT COUNSELORS**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Rape crisis center" means any publicly or privately funded agency, institution or facility existing in this State, having as its purpose to reduce the trauma of sexual assault to sexual assault victims and their families through crisis intervention, counseling, medical and legal information and dissemination of educational information pertaining to sexual assault. [2013, c. 2, §29 (COR).]

B. "Sexual assault counselor" means a person who :

(1) Has undergone a program of training from a rape crisis center that includes, but is not limited to: law, medicine, societal attitudes, crisis intervention, counseling techniques and referral services; and

(2) Is either a staff member, paid or unpaid, or under the supervision of a staff member of a rape crisis center. [2013, c. 2, §29 (COR).]

C. "Confidential criminal history record information" has the same meaning as in section 703, subsection 2. [2013, c. 588, Pt. E, §8 (NEW).]

D. "Criminal justice agency" has the same meaning as in section 703, subsection 4. [2013, c. 588, Pt. E, §8 (NEW).]

[2013, c. 2, §29 (COR).]

**2. Privileged communications.** Except with regard to reporting, cooperating in an investigation or giving evidence pursuant to Title 22, chapter 958-A or 1071, or except at the request, or with the consent of, the victim of sexual assault, a sexual assault counselor may not be required to testify in any civil or criminal action, suit or proceeding at law or in equity about any information that the sexual assault counselor may have acquired in providing sexual assault counseling services. A sexual assault counselor or a rape crisis center may not be required to disclose to the court any records, notes, memoranda or documents containing confidential communications. When a court in the exercise of sound discretion determines the disclosure necessary to the proper administration of justice, information communicated to, or otherwise learned by, that sexual assault counselor in connection with the provision of sexual assault counseling services is not privileged and disclosure may be required.

[2007, c. 577, §1 (AMD).]

**3. Confidential criminal history record information.** A Maine criminal justice agency, whether directly or through any intermediary, may disseminate confidential criminal history record information to a sexual assault counselor for the purpose of planning for the safety of a victim of sexual assault. A sexual assault counselor who receives confidential criminal history record information pursuant to this subsection shall use it solely for the purpose authorized by this subsection and may not further disseminate the information.

[2013, c. 588, Pt. E, §9 (NEW).]

#### SECTION HISTORY

1983, c. 319, (NEW). 2007, c. 577, §1 (AMD). RR 2013, c. 2, §29 (COR). 2013, c. 588, Pt. E, §§8, 9 (AMD).

## §53-B. PRIVILEGED COMMUNICATIONS TO VICTIM ADVOCATE; FAMILY VIOLENCE

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Advocate" means an employee of or volunteer for a nongovernmental or Maine tribal program for victims of domestic or family violence who:

- (1) Has undergone at least 30 hours of training; and
- (2) As a primary function with the program gives advice to, counsels or assists victims, supervises employees or volunteers who perform that function or administers the program. [2013, c. 478, §3 (AMD).]

A-1. "Confidential communications" means all information, whether written or oral, transmitted between a victim and a domestic violence advocate in the course of the working relationship. "Confidential communications" includes, but is not limited to, information received or given by the advocate in the course of the working relationship, advice, records, reports, notes, memoranda, working papers, electronic communications, case files, history and statistical data, including name, date of birth and social security number, that personally identify the victim. [2005, c. 388, §1 (NEW).]

A-2. "Confidential criminal history record information" has the same meaning as in section 703, subsection 2. [2013, c. 478, §4 (NEW).]

A-3. "Criminal justice agency" has the same meaning as in section 703, subsection 4. [2013, c. 478, §5 (NEW).]

B. "Victim" means a victim of domestic or family violence. [1995, c. 128, §1 (NEW).]

[2013, c. 478, §§3-5 (AMD).]

**1-A. Confidential criminal history record information.** A Maine criminal justice agency, whether directly or through any intermediary, may disseminate confidential criminal history record information to an advocate for the purpose of planning for the safety of a victim of domestic violence. An advocate who receives confidential criminal history record information pursuant to this subsection shall use it solely for the purpose authorized by this subsection and may not further disseminate the information.

[2013, c. 588, Pt. E, §10 (AMD).]

**2. Privileged communication.** Communications are privileged from disclosure as follows.

A. A victim may refuse to disclose and may deny permission to an advocate to disclose confidential written or oral communications between the victim and the advocate and written records, notes, memoranda or reports concerning the victim. [1995, c. 128, §1 (NEW).]

B. Except as provided in subsection 3, a victim, advocate or advocate's agency may not be required through oral or written testimony or through production of documents to disclose to a court in criminal or civil proceedings or to any other agency or person confidential communications between the victim and the advocate. [1995, c. 128, §1 (NEW).]

[1995, c. 128, §1 (NEW).]

**3. Exceptions.** A person may not be required to publicly disclose the address or location of a domestic or family violence shelter or safe house, except that privileged communications may be disclosed in the following cases:

A. When disclosure is required under Title 22, chapter 958-A or 1071 and that disclosure is in accordance with the provisions of either chapter; [2007, c. 577, §2 (AMD).]

B. When a court in the exercise of its discretion determines the disclosure of the information necessary to the proper administration of justice, an inspection of records may be held in camera by the judge to determine whether those records contain relevant information. This proceeding does not entitle an opposing party to examine the records unless those records are made available by the court; or [1995, c. 128, §1 (NEW).]

C. When a victim dies or is incapable of giving consent and disclosure is required for an official law enforcement investigation or criminal proceeding regarding the cause of that victim's death or incapacitation. [1995, c. 128, §1 (NEW).]

[2007, c. 577, §2 (AMD).]

#### SECTION HISTORY

1995, c. 128, §1 (NEW). 2005, c. 388, §1 (AMD). 2007, c. 577, §2 (AMD). 2013, c. 478, §§3-6 (AMD). 2013, c. 588, Pt. E, §10 (AMD).

### **§53-C. PRIVILEGED COMMUNICATIONS TO GOVERNMENTAL VICTIM WITNESS ADVOCATES OR COORDINATORS**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Crime" means a criminal offense in which there is a victim, as defined in this section. [1999, c. 369, §1 (NEW).]

B. "Victim" means:

(1) A person against whom a crime has been committed;

(2) The immediate family of a victim of a crime if:

(a) The underlying crime is one of domestic violence or sexual assault or one in which the family suffered serious physical trauma or serious financial loss; or

(b) Due to death, age or physical or mental disease, disorder or defect, the victim is unable to participate as allowed under this chapter. [1999, c. 369, §1 (NEW).]

C. "Victim witness advocate" or "victim witness coordinator" means an employee of or volunteer for a district attorney, the Attorney General or the United States Attorney whose primary job function is to advise, counsel or assist victims or witnesses of crimes, to supervise other employees or volunteers who perform that function or to administer the program. [1999, c. 369, §1 (NEW).]

[ 1999, c. 369, §1 (NEW) .]

**2. Privileged communications.** Communications are privileged from disclosure as follows.

A. A victim may refuse to disclose and may deny permission to a victim witness advocate or coordinator to disclose confidential written or oral communications between the victim and the advocate or coordinator and written records, notes, memoranda or reports concerning the victim. [1999, c. 369, §1 (NEW).]

B. Except as provided in subsection 3, a victim, advocate or coordinator or the victim advocate's or coordinator's employer may not be required, through oral or written testimony or through production of documents, to disclose to a court in criminal or civil proceedings or to any other agency or person confidential communications between the victim and the advocate or coordinator. [1999, c. 369, §1 (NEW).]

[ 1999, c. 369, §1 (NEW) .]

**3. Exceptions.** Privileged communications may be disclosed in the following cases:

A. Disclosure may be made to the district attorney, Attorney General or the United States Attorney or their assistants; [1999, c. 369, §1 (NEW).]

B. When disclosure is required under Title 22, chapter 958-A or 1071 and that disclosure is in accordance with either chapter; [2007, c. 577, §3 (AMD).]

C. When a court in the exercise of its discretion determines the disclosure of information necessary to the proper administration of justice, an inspection of records may be held in camera by the judge to determine whether those records contain relevant information. This proceeding does not entitle an opposing party to examine the records unless those records are made available by the court; [1999, c. 369, §1 (NEW).]

D. When a victim dies or is incapable of giving consent and disclosure is required for an official law enforcement investigation or criminal proceeding regarding the cause of that victim's death or incapacitation; or [1999, c. 369, §1 (NEW).]

E. Evidence of an exculpatory nature must be disclosed to the criminal defendants pursuant to the Maine Rules of Unified Criminal Procedure, Rule 16. [2015, c. 431, §34 (AMD).]

[ 2015, c. 431, §34 (AMD) .]

#### SECTION HISTORY

1999, c. 369, §1 (NEW). 2007, c. 577, §3 (AMD). 2015, c. 431, §34 (AMD).

## **§54. ATTESTATION OF WILLS AND INSTRUMENTS NOT AFFECTED** ***(REPEALED)***

SECTION HISTORY  
1979, c. 540, §§24-A (RP).

## **§55. RELIGIOUS BELIEF AFFECTS CREDIBILITY ONLY; ATHEISTS MAY TESTIFY** ***(REPEALED)***

SECTION HISTORY  
1977, c. 564, §76 (RP).

## **§56. PRIOR CONVICTION AS AFFECTING CREDIBILITY** ***(REPEALED)***

SECTION HISTORY  
1973, c. 295, (AMD). 1977, c. 564, §77 (AMD). 1979, c. 127, §120 (RP).

## **§57. PRIVILEGED COMMUNICATIONS; CLERGYMEN** ***(REPEALED)***

SECTION HISTORY  
1965, c. 117, (NEW). 1977, c. 184, §1 (RP).

## **§58. EXCEPTION** ***(REPEALED)***

SECTION HISTORY  
1965, c. 117, (NEW). 1977, c. 184, §1 (RP).

## **§59. ACTIONS FOR INJURY TO OR DEATH OF PERSONS** ***(REPEALED)***

SECTION HISTORY  
1967, c. 406, (NEW). 1977, c. 564, §78 (RP).

## **§60. PSYCHIATRIST AND PATIENT** ***(REPEALED)***

SECTION HISTORY  
1973, c. 481, (NEW). 1977, c. 564, §79 (RP).

## §61. SHIELDING JOURNALIST'S CONFIDENTIAL SOURCES

**1. Compelled disclosure prohibited.** A judicial, legislative, administrative or other body with the power to issue a subpoena may not compel a journalist to testify about, produce or otherwise disclose or adjudge the journalist in contempt for refusal to testify about, produce or disclose:

- A. The identity of a confidential source of any information; [ 2007, c. 654, §1 (NEW) . ]
- B. Any information that could be used to identify a confidential source; or [ 2007, c. 654, §1 (NEW) . ]
- C. Any information obtained or received in confidence by the journalist acting in the journalistic capacity of gathering, receiving, transcribing or processing news or information for potential dissemination to the public. [ 2007, c. 654, §1 (NEW) . ]

[ 2007, c. 654, §1 (NEW) . ]

**2. Exceptions allowing compelled disclosure.** A court may compel disclosure of the identity of a source or information described in subsection 1 if the court finds, after the journalist has been provided notice and the opportunity to be heard, that the party seeking the identity of the source or the information has established by a preponderance of the evidence:

- A. In all matters, whether criminal or civil, that:
  - (1) The identity of the source or the information is material and relevant;
  - (2) The identity of the source or the information is critical or necessary to the maintenance of a party's claim, defense or proof of an issue material to the claim or defense;
  - (3) The identity of the source or the information is not obtainable from any alternative source or cannot be obtained by alternative means or remedies less destructive of First Amendment rights; and
  - (4) There is an overriding public interest in the disclosure; and [ 2007, c. 654, §1 (NEW) . ]
- B. Based on information obtained from a source other than the journalist that:
  - (1) In a criminal investigation or prosecution, there are reasonable grounds to believe that a crime has occurred; or
  - (2) In a civil action or proceeding, there is a prima facie cause of action. [ 2007, c. 654, §1 (NEW) . ]

[ 2007, c. 654, §1 (NEW) . ]

**3. Compelled disclosure from 3rd parties.** The protection from compelled disclosure contained in subsection 1 also applies with respect to any subpoena issued to, or other compulsory process against, a 3rd party that seeks records, information or other communications relating to business transactions between the 3rd party and the journalist for the purpose of discovering the identity of the source or obtaining information described in subsection 1. Whenever a subpoena is issued to, or other compulsory process is issued against, a 3rd party that seeks records, information or other communications on business transactions with the journalist, the affected journalist must be given reasonable and timely notice of the subpoena or compulsory process before it is executed or initiated and an opportunity to be heard. In the event that the subpoena issued to, or other compulsory process against, the 3rd party is in connection with a criminal investigation in which the journalist is the express target and advance notice as provided in this section would pose a clear and substantial threat to the integrity of the investigation, the governmental authority shall so certify to such a



threat in court and notification of the subpoena or compulsory process must be given to the affected journalist as soon as it is determined that the notification will no longer pose a clear and substantial threat to the integrity of the investigation.

[ 2007, c. 654, §1 (NEW) .]

**4. Waiver.** A journalist waives the protection provided by this section if the journalist voluntarily discloses or consents to disclosure of the protected information described in subsection 1, paragraphs A and B.

[ 2007, c. 654, §1 (NEW) .]

#### SECTION HISTORY

2007, c. 654, §1 (NEW).

### Subchapter 3: ATTENDANCE

#### **§101. SUBPOENAS FOR WITNESSES**

The clerks of the several courts and notaries public may issue subpoenas for witnesses to attend before any court or before persons authorized to examine witnesses, to give evidence concerning any pending matter. [1981, c. 456, Pt. A, §58 (AMD).]

#### SECTION HISTORY

1981, c. 456, §A58 (AMD).

#### **§102. FAILURE OF WITNESS TO APPEAR; CONTEMPT; LIABILITY**

When a person, summoned and obliged to attend before any judicial tribunal, fails to do so without reasonable excuse, he is liable to the party aggrieved for all damages sustained thereby. The judge or justice of such tribunal may issue a capias to apprehend and bring such delinquent before him, and he shall be punished by a fine of not more than \$100 and costs of attachment, and committed until the same and costs are paid.

### Subchapter 4: EXAMINATION

#### **§151. OATHS**

A person to whom an oath is administered shall hold up his hand unless he believes that an oath administered in that form is not binding, and then it may be administered in a form believed by him to be binding. One believing any other than the Christian religion may be sworn according to the ceremonies of his religion.

#### **§152. AFFIRMATION**

Persons conscientiously scrupulous of taking an oath may affirm as follows: "I affirm under the pains and penalties of perjury," which affirmation is of the same force and effect as an oath.

#### **§153. TESTIMONY TO BE TAKEN ORALLY IN OPEN COURT**

In all civil actions the testimony of witnesses shall be taken orally in open court, unless otherwise provided by rule.

#### **§154. IMPEACHING OF OWN WITNESS**

When a party either nominal or real or the husband or wife of a party is used as a witness by an adverse party, testimony may be introduced by such adverse party to contradict or discredit him.

## **§155. REFUSAL TO ANSWER**

When a witness in court refuses to answer such questions as the court allows to be put, he shall be punished by a fine of not more than \$100 or by imprisonment for not more than 3 months.

### **Subchapter 5: IMMUNITIES**

## **§201. SELF-INCRIMINATION; WAIVER**

No defendant shall be compelled to testify in any action when the pleadings in that action imply or charge an offense against the criminal law or a traffic infraction or a violation of Title 22, section 2383, on his part. If he offers himself as a witness, he waives his privilege of not incriminating or testifying against himself, but his testimony shall not be used in evidence against him in any criminal prosecution, or other traffic infraction proceeding or in any other civil violation proceeding arising under Title 22, section 2383, involving the same subject matter. [1975, c. 740, §2-A (RPR).]

#### **SECTION HISTORY**

1975, c. 430, §22 (AMD). 1975, c. 740, §§2-A (RPR).

### **Subchapter 6: FEES**

## **§251. FEES OF WITNESSES**

Witnesses, other than law enforcement officers testifying in their official capacity, in the Supreme Judicial Court, the Superior Court, the District Court or in the Probate Court, unless the court otherwise orders, must receive \$10, and before referees, auditors or commissioners specially appointed to take testimony or special commissioners on disputed claims appointed by Probate Courts, \$10, or before the county commissioners, \$10 for each day's attendance and 22¢ a mile for each mile's travel going and returning home. The party calling the witness shall pay the witness. Payments made under this section to witnesses called on behalf of the State must be made from the county treasury upon authorization of the prosecuting attorney, unless otherwise directed by law. The court in its discretion may allow at the trial of any cause, civil or criminal, in the Supreme Judicial Court, the Superior Court or the District Court, a reasonable sum for each day's attendance of any expert witness or witnesses at the trial, in taxing the costs of the prevailing party, and the expense of all expert witnesses for the State in murder cases must be paid by the State and charged against the appropriation for the Department of the Attorney General. Such party or the attorney of record shall first file an affidavit within 30 days after entry of judgment and before the cause is settled, stating the name, residence, number of days in attendance and the actual amount paid or to be paid each expert witness in attendance at such trial. No more than \$10 per day may be allowed or taxed by the clerk of courts in the costs of any civil action for the per diem attendance of a witness, unless the affidavit is filed, and the per diem is determined and allowed by the presiding justice. [2007, c. 539, Pt. JJ, §7 (AMD); 2007, c. 539, Pt. JJ, §10 (AFF).]

#### **SECTION HISTORY**

1967, c. 286, (AMD). 1971, c. 199, (AMD). 1971, c. 261, §2 (AMD). 1971, c. 544, §52 (AMD). 1975, c. 731, §16 (AMD). 1983, c. 538, §1 (AMD). 1985, c. 384, §6 (AMD). 2007, c. 539, Pt. JJ, §7 (AMD). 2007, c. 539, Pt. JJ, §10 (AFF).

## **§252. FEES OF POLICE OFFICER OR CONSTABLE**

No police officer or constable paid a salary or paid upon a per diem basis by a municipality shall receive any fee as a complainant or witness, or for making an arrest or for attendance at court, while on duty and being compensated therefor, but shall be reimbursed by such municipality for his actual costs of arrest and actual expenses of travel and attendance. Whenever any fines or penalties are imposed by any court in any proceeding in which such a police officer or constable is a complainant or a witness, said court may tax costs for such complainant or witness in the usual manner to be paid by the Treasurer of State to the municipality

employing such police officer or constable; such costs shall not exceed his actual expenses, paid by the municipality for his travel to and attendance at the court. Notwithstanding any other provisions of law, all law enforcement officers appearing at the order of a prosecuting official before the Superior Court or grand jury, whether or not called upon to give testimony, at times other than their regular working hours shall be compensated on an hourly basis equal to their present rate of employment to be paid by the respective county treasurer. [1975, c. 408, §35 (AMD).]

In the event that any police officer or constable is compensated by the municipality for attendance at court on an hourly basis equal to his present rate of employment, then he shall not be compensated by the county as provided in this section, but the county shall compensate the municipality for that amount paid to the police officer or constable for his attendance at court. [1973, c. 301, (NEW).]

#### SECTION HISTORY

1971, c. 261, §3 (AMD). 1973, c. 301, (AMD). 1973, c. 625, §87 (AMD). 1975, c. 369, §3 (AMD). 1975, c. 383, §22 (AMD). 1975, c. 408, §35 (AMD).

### **§253. WITNESS NOT OBLIGATED UNLESS FEES PAID OR TENDERED**

No person is obliged to attend any court as a witness in a civil action or at any place to have his deposition taken unless his legal fees for travel to and from the place and for one day's attendance are first paid or tendered. His fees for each subsequent day's attendance must be paid at the close of the preceding day if he requests it.

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